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OFFICE OF PETITIONS

In re Application of
Apple et al.
Application No. 08/736,143
Filed: October 28, 1996
Attorney Docket No. 03294.0027-0

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the petition filed July 11, 1997, under 37 CFR. §1.47(a).

The petition under 37 CFR. §1.47(a) is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR. §1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR. §1.136(a).

The above-identified application was filed on October 28, 1996, without an executed oath or declaration. Accordingly, on January 14, 1997, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring for the purposes of this decision an executed oath or declaration in compliance with §1.63, and a surcharge for its late filing. This Notice set an extendable two-month period for reply of March 14, 1997.

In reply, applicant filed a petition, the surcharge for late filing of the declaration, and a partially executed declaration. To make the reply timely, a four (4) month extension of time was also submitted.

A grantable petition under 37 CFR. §1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. The instant petition does not satisfy requirements (1).

As to item (1), Rule 47 applicant has failed to show that inventor Footen was ever presented

with a copy of the application papers. Before a refusal can be alleged, applicant must demonstrate a bona fide attempt was made to present a copy of application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor. See MPEP 409.03(d). The petition and declaration in support of the petition indicates only the declaration pursuant to 37 CFR 1.63 was presented. To the extent the application papers (specification, including claims, drawings, and oath or declaration) were presented to the inventor, a statement to that effect should be provided. Further correspondence with respect to this matter should be addressed as follows:

By mail:

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By facsimile:

(571) 273-8300

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Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3215.



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